

SEP 05 2006

US Serial No. 10/760,048
Response to Restriction Requirement
Page 5 of 6

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REMARKS

Restriction was required between Group I (Claims 1-9) and Group II (Claims 10-18). Further restriction was required to one of SEQ ID NOS:1-10. In order to be fully responsive, Applicants elect the claims of Group II and further elect SEQ ID NO:7. Applicants reserve the right to file divisional or continuation applications.

Applicants traverse the present restriction requirement and request reconsideration in view of the following remarks. Applicants request examination of new claims 19-23 as filed.

The probes disclosed in the present application hybridize to nucleic acids encoding the Enterovirus serotypes recognized as infectious to humans, including, but not limited to: 3 polioviruses, 23 coxsackie A viruses, 6 coxsackie B viruses, 28 echoviruses and 4 other enteroviruses. The primers of the present invention are designed to operate as pairs, in order to achieve exponential amplification. It is respectfully asserted that the primers share common subject matter directed to the basic inventive concept and are, therefore, so interwoven as to constitute a single invention to be examined together.

Applicants note that a requirement for restriction is not mandatory under either 35 U.S.C. §121 or 37 C.F.R. §1.142, it is merely discretionary. In addition, the courts have recognized the advantages to the public interest to permit a patentee to claim all aspects of its invention, as the Applicants have done herein, so as to encourage the patentee to make a more detailed disclosure of all aspects of its discovery. The CCPA has observed:

We believe the constitutional purpose of the patent system is promoted by encouraging applicants to claim, and therefore to describe in a manner required by 35 U.S.C. §113 all aspects of what they regard as their invention; regardless of the number of statutory classes involved. In re Kuehl, 177 USPQ 250, 256 (CCPA 1973). (Emphasis added).

Furthermore, Applicants respectfully suggest that in view of the continued increases of official fees and the potential limitation of an applicant's financial resources, a practice which imposes undue restriction requirements may become prohibitive and thereby contravene the constitutional intent to promote and encourage the progress of science and the useful arts.

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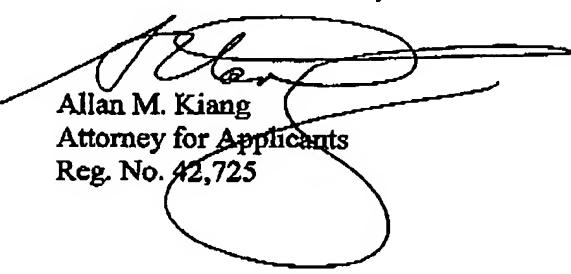
US Serial No. 10/760,048
Response to Restriction Requirement
Page 6 of 6

Thus, it is respectfully urged that the Examiner reconsider and allow examination of the claims 19-23.

The Commissioner is hereby authorized to charge any fees necessary in connection with this response and this application to Deposit Account Number 02-1666.

If the Examiner has any questions or comments relating to the present application, she is respectfully invited to contact Applicant's attorney at the telephone number set forth below.

Respectfully submitted,


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